STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

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July 12, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: CC Docket No. 92-77: In the Matter of Billed Party Preference for InterLATA 0+ Calls.

Dear Mr. Secretary:

Enclosed please find an original and six copies of the Comments of the New York State Consumer Protection Board in CC Docket No. 92-77. Two copies are being provided to the Enforcement Division of the Common Carrier Bureau and one copy is being filed with the Commission's copy contractor.

Very truly yours,

Ann Kutter
Deputy Executive Director

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Billed Party Preference for InterLATA O+ Calls	CC Docket No. 92-77

COMMENTS OF THE NEW YORK STATE
CONSUMER PROTECTION BOARD

OVERVIEW

The New York State Consumer Protection Board (NYCPB) -- a state agency which represents the interests of New York's residential and small business consumers -- respectfully submits these comments in response to the Federal Communications Commission's (FCC's) Second Further Notice of Proposed Rulemaking released June 6, 1996 (SFNPRM). The goal of this proceeding is to establish rules to ensure that consumers have the information they need to make informed choices when making interLATA "O+" calls from payphones and other public phones.[1] The NYCPB recommends that this objective be achieved through federal policies which require companies that charge above a benchmark rate to disclose that fact, and the applicable charges for that specific call, to the consumer before the consumer incurs any charge for the call.

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[1] A "O+" call is one that is made by dialing a "O" plus a telephone number, without first dialing a carrier access code such as 10288, 10222 or 10333.

Individuals making interLATA telephone calls while away from their home or business often rely on public telephones -- payphones or other phones such as those in hotels or motels that are made available "to the public or to transient users ... for interstate telephone calls using a provider of operator services" (47 U.S.C. § 226(a)(2)). Many consumers use "0+" dialing to access operator services to facilitate completion or billing of those calls. Companies that accept interLATA collect calls, credit card calls, and/or third party billing are referred to as operator services providers (OSPs), and include AT&T MCI, Sprint and hundreds of other companies.

The presence of a large number of OSPs has not resulted in the benefits of reduced rates for all consumers making interLATA "0+" calls from public telephones for several reasons. First, interLATA "0+" calls from public telephones are currently routed to the OSP chosen by the owner of the premises or payphone. Many OSPs provide high commissions to those owners and charge high rates to callers. Consumers using such telephones who do not use access codes to connect to their preferred carrier are forced to pay high charges.

Second, unlike most other products and services, the price of operator services is generally not disclosed to the consumer at the point of purchase. As a result, many consumers do not discover that they are to be charged a rate exceeding their expectations until they receive a bill -- sometimes well after the calls have been made.

Finally, many consumers are under the misconception that if

they use the calling card issued by their local exchange carrier, their call will be handled by that company or they will be charged rates comparable to those of that company or their presubscribed carrier. As a result of these factors, OSPs have a significant opportunity to earn high profits while providing a product at above-market rates.

To help address these concerns, the FCC required in 1991 that an OSP "identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call." (47 C.F.R. § 64.703(a)(1)) This notifies consumers that they may not be purchasing service from their preferred interexchange carrier. However, notification is not sufficient to prevent consumer surprise and dissatisfaction since it provides no indication of the rates to be charged by the company carrying that call.

In mid-1994, the FCC tentatively concluded that a technological solution could address many of these consumer problems. That system, known as "billed party preference" (BPP), would determine the OSP pre-selected by the party being billed for the call and would automatically route the call to that provider and charge rates determined by that Company. (CC Docket No. 92-77, 9 FCC Rcd 3320 (1994)) However, the FCC concluded that further analysis was required before it could order that BPP be implemented, due to its projected high cost.

Since that time, the FCC has received over 5,000 complaints annually regarding OSP prices, and the number of such complaints

appears to be increasing. (SFNPRM, at 7, ftn. 22) Similarly, the NYCPB continues to receive a high rate of complaints and inquiries regarding this issue. This demonstrates that stronger measures are required to protect consumers and that implementation of additional consumer safeguards should proceed as soon as possible.

The NYCPB recommends that FCC rules be developed to help ensure that consumers do not unintentionally or inadvertently use carriers that charge unexpected high rates. Effective and efficient means should be developed for providing consumers the information they need to make fully informed choices regarding interLATA calls made from public telephones.

To help achieve this objective, we recommend that the FCC's tentative conclusion regarding disclosure of high rates for interLATA "0+" calls (SFNPRM, at 4) be adopted, with some modification, as soon as practicable. In particular, benchmarks for OSP rates should be established, and OSPs charging greater than those benchmarks should be required to disclose orally to consumers the actual price that will be charged for the call dialed before connecting the call.[2]

The FCC proposed that the benchmark for OSP rates be set at 115% of the average of the prices charged by the three largest OSPs -- AT&T, MCI and Sprint. We agree that OSP benchmarks should be

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[2] With this information, consumers may decide not to complete the call using the OSP presubscribed to that public telephone. In that case, they may choose to use another means to complete that call -- such as dialing an access code or "800" number to reach their preferred carrier. Information posted on public telephones and telephone operators may also assist consumers in completing calls using less costly means.

set with reference to the prices charged by AT&T, MCI and Sprint, since those are the three largest competitive companies used by the vast majority of residential consumers and ratepayers generally expect rate levels to be within the range charged by these carriers. As explained by the FCC, the tariffed interstate operator services rates show little, if any, variation among the three companies. (SFNPRM, Appendix D, at 2) Therefore, consumer expectations regarding rates charged by OSPs are within a relatively narrow range, but no higher than the highest rates charged by those three companies. For this reason, we disagree with the FCC's tentative conclusion that benchmarks for each service be set 15% above the average of the prices charged by AT&T, MCI and Sprint. Instead, the benchmarks for each service should be set no higher than the highest rates charged by those companies.

We also disagree with the FCC's tentative conclusion regarding the frequency of updates to those benchmarks. The FCC proposed that benchmarks be set on January 1 of each year for the twelve-month period beginning the following July. According to the FCC, this is required to "make it administratively easier" for OSPs to comply with these regulations. (SFNPRM, at 15) In our view, this provision would greatly diminish the consumer benefit of disclosure of OSP rates. AT&T, MCI and Sprint may change their rates at their discretion, thereby causing previous benchmarks to be out-of-date. To ensure the accuracy of benchmarks, they should be updated no less frequently than quarterly.

Other alternatives being considered by the FCC are inferior to

requiring disclosure of rates above a benchmark. For example, the FCC sought comment on whether all OSPs should be required to disclose the price of all interLATA "0+" calls, regardless of whether they are above or below benchmark rates. (SFNPRM, at 10) In our view, companies charging competitive rates should not be required to comply with additional regulation or bear additional costs. Further, there would be little consumer benefit from such mandatory disclosure. Indeed, if all OSPs are required to automatically disclose prices, consumers may disregard those messages if they hear them too often, thereby diminishing their effectiveness. Only companies charging prices that are above benchmark rates should be required to automatically disclose such prices to all consumers.[3]

We also do not support another alternative considered by the FCC, the joint proposal of parties including the Competitive Telecommunications Association, Bell Atlantic and NYNEX -- referred to as the CompTel proposal. (SFNPRM, at 8) Under that approach, only OSPs whose rates exceed benchmark ceilings including $3.75 for the first minute for collect, calling card and third party billing, would be subject to regulatory scrutiny or disclosure requirements. (SFNPRM, Appendix C) Those benchmarks are far too high -- more than double the average of the rates for calling card calls charged by AT&T, MCI and Sprint. (SFNPRM, Appendix E, Table C) Accordingly, they would not identify prices that consumers, in

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[3] Of course, customers of all OSPs should be able to obtain information, upon request, regarding the prices charged by those companies.

general, would characterize as excessive and would not provide consumers adequate information regarding prices above levels they expect to pay.

We also disagree with the suggestion that posting written information regarding OSP rates could effectively substitute for oral notification of those rates. (SFNPRM, at 19) Posting that information on or near public telephones is not sufficient. Such postings may be missing, vandalized or out-of-date. An oral message, however, can always be provided by the OSP and accessed by consumers and can be easily and inexpensively updated by the OSP to ensure its accuracy.

We also recommend that the BPP solution be considered further as local number portability develops, since that technology may lower the incremental cost of BPP. Finally, we encourage the FCC to allow individual states to implement more stringent rules concerning intraLATA services. Individual states are in the best position to identify and respond to consumer protection issues relating to intraLATA services.

CONCLUSION

The New York State Consumer Protection Board recommends that the FCC adopt rules which require companies that charge above a benchmark rate for interLATA "O+" calls -- the highest of the rates charged by AT&T, MCI and Sprint for each service -- to disclose that fact, and the price of that specific call, to the consumer before the consumer incurs any charge for the call.

Respectfully submitted,

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